

ANNEX I: QUESTIONNAIRE

RESPONDENT INFORMATION FORM

Please note: this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name (if applicable)

The Church of Scotland

Title: Mr Ms Mrs Miss Dr

Surname Chalmers

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2. Contact details

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3. Which country are you resident in? (please select one of the options below)

Scotland

Rest of the UK

Rest of the World

4. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

The Scottish Government generally seeks to publish responses to a consultation, in summary and, where possible, in detail. We would like your permission to publish:

Please tick ONE of the following boxes

Your name along with your response

or

Just your response (anonymous)

or

Please do not publish my response at all

The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on this site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Are you content for Scottish Government to contact you again in relation to this consultation?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

These consultation questions seek views on the detail of the legislation that will: introduce same sex marriage; allow civil partnerships to be registered through religious or belief ceremonies; and make other changes to marriage law. Further information on the detail of the legislation is available below each question (see 'more information') and in the consultation paper.

There is no obligation to answer all of the questions – you may answer as many or as few as you like.

Impact assessments

Question 1 (Paragraphs 1.14 to 1.17 and Annexes J and K).

Do you have any comments on the impact assessments prepared in relation to the proposed legislation?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

General changes to marriage law

Question 2 (Paragraphs 2.02 to 2.04)

Do you have any comments on allowing opposite sex and same sex civil marriage ceremonies to take place anywhere agreed between the registrar and the couple, other than religious premises?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 3 (Paragraphs 2.05 to 2.10)

Do you have any comments on establishing belief ceremonies as a third type of ceremony, alongside religious and civil, for getting married in Scotland?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 4 (Paragraphs 2.11 to 2.14)

Do you have any comments on amending section 8 of the Marriage (Scotland) Act 1977 so that Church of Scotland deacons are authorised automatically to solemnise opposite sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The Church welcomes the introduction of this provision.

Question 5 (Paragraphs 2.15 to 2.21)

Do you have any comments on establishing tests that a religious or belief body must meet before its celebrants can be authorised to solemnise marriage or register civil partnership?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The Church supports the intention of the Scottish Government and the Registrar General to ensure the integrity of Scottish marriage ceremonies but awaits sight of the draft regulations before making further comment.

Question 6 (Paragraphs 2.28 to 2.31)

Do you have any comments on abolishing the concept of marriage by cohabitation with habit and repute where a couple erroneously believed themselves to be married but it transpired after one of them died that the marriage was not valid?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Same sex marriage

Question 7 (Paragraphs 3.03 to 3.07 and Annex A)

Do you have any comments on the proposals for authorising religious and belief celebrants who wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The Church adheres to the views expressed in its Response dated 1 December 2011 to the Scottish Government's Consultation on the Registration of Civil Partnerships/Same Sex Marriage. Nevertheless, the Church recognises that the Scottish Government intends to introduce same sex marriage. In these circumstances, the Church broadly welcomes the scheme

which the Government proposes. However, much of that scheme will be contained in regulations and guidance which have not yet been published. The Church is also aware that even if enacted and issued, such legislation and guidance is subject to repeal and revocation and to potential challenge in the European Court of Human Rights.

The Church urges the Government to reconsider its proposals in the following respects:

1. In so far as it relates to religious solemnisation of same sex marriage, the scheme is essentially permissive. The Church understands that the Government does not wish to compel religious bodies or celebrants to solemnise same sex marriages or to imply that they have a duty to do so. Nevertheless, the Church believes that those intentions could be expressed in simpler and less ambiguous terms. The Church is particularly concerned about the proposed modifications to the Equality Act 2010 which are inconsistent with the Scottish Government's scheme.

Firstly, in contrast with the Scottish Government's intentions and in particular section 8(1D)(d), the proposed modifications to the Equality Act 2010 restrict the circumstances in which a minister or deacon may lawfully refuse to solemnise a same sex marriage. They only permit refusal to solemnise a same sex marriage if to do so 'would conflict with the approved celebrant's religious or philosophical beliefs'. This is too narrow and excludes, for example, the possibility that a minister may refuse to solemnise a same sex marriage in order to preserve the peace of his or her congregation.

Secondly, the wide definition of 'approved celebrant' in proposed paragraph 25A(3)(a) of the Equality Act 2010, Schedule 3 read together with the terms of paragraph 25A(2) and (3) appears to negate the two-level 'opt-in' proposed by the Scottish Government which would permit, but not require, a minister or deacon to apply to be eligible to solemnise same sex marriages in the event that the Church of Scotland permits its ministers and deacons to do so. In paragraph 25A 'approved celebrant' includes all Church of Scotland ministers and deacons and permits them to refuse to solemnise a same sex marriage only in certain limited circumstances. The Church is concerned that this may be construed as implying that, if the Church of Scotland decides to allow its ministers and deacons to solemnise same sex marriages, then all ministers and deacons must apply to become and remain eligible to do so unless they fall within the narrow exception provided for in paragraph 25A(2). For a minister or deacon not to do so would amount to a refusal to solemnise same sex marriages. As above, the Church does not wish a minister or deacon to be placed in a situation where he or she is unable to take account of material considerations beyond his or her own religious beliefs.

Thirdly, it is not made clear in the draft Bill that a religious body may nominate one of its members so that he or she is registered as empowered to solemnise same sex marriages only with the agreement of that member. Neither is it specified that there is no duty on any member of a religious body to allow himself or herself to be so nominated nor that a religious body may not require

any of its members to be so nominated and, if registered, to remain so registered.

Accordingly the Church proposes that Scottish and UK legislation should be consistent in providing, without qualification, that an approved celebrant may refuse to solemnise a marriage if the parties to the marriage are of the same sex. This would match the equivalent provision in the Norwegian law of marriage and the terms of existing paragraph 25 (1) and proposed paragraph 25(3) of the Equality Act 2010, Schedule 3. Proposed paragraph 25A(2) should be removed or, if it is to be retained, the limited scope of permitted reasons for refusal should be extended beyond the religious beliefs of the approved celebrant.

Furthermore, section 8 of the Marriage (Scotland) Act 1977 (as proposed) should be amended to provide that no religious body may nominate one of its members so that he or she is registered as empowered to solemnise same sex marriages without the agreement of that member. Section 8 should also be amended to make clear that there is no duty on any member of a religious body to allow himself or herself to be so nominated. Section 8 should be further amended to provide that a religious body may not require any of its members to be or to remain so registered.

2. The Government's scheme offers no protection to others who might otherwise be involved in the religious solemnisation of a marriage such as an organist or church-officer. Accordingly, the scheme should include all who might reasonably be expected to participate in or facilitate the solemnisation of a religious marriage between persons of different sexes.

3. The Church has places of worship and ecclesiastical buildings throughout Scotland which are used or are available for the solemnisation of opposite sex marriages by its ministers and deacons. Generally, these buildings are under the control of parish ministers and kirk sessions and other congregational committees with Presbyteries having a duty of oversight. The Church is concerned that the potential for use of these buildings for the solemnisation of same sex marriages may be a cause of conflict and may deprive its ministers and courts of their right to decide how they are to be used.

The Church believes that paragraph 2 of the Equality Act 2010, Schedule 23 provides limited and inadequate protection to ministers and others who may have control over church buildings. For example, when faced with a request by another celebrant who might have been permitted to use the buildings to solemnise an opposite sex marriage, to use the buildings to solemnise a same sex marriage, it appears that a minister's own religious beliefs or his or her desire to preserve the peace of his or her congregation are irrelevant considerations. In so far as a Church court or committee might be involved, it is not clear what protection paragraph 2 offers them.

Accordingly the Church proposes that Scottish and UK legislation should be consistent in providing, without qualification, that any person having control over or responsibility for the use of church buildings may refuse to permit them

to be used for the solemnisation of a same sex marriage.

4. The Government has not made clear how its proposals relate to armed forces' chaplains. The Church does not wish any of its ministers or deacons who are forces' chaplains to be obliged to solemnise same sex marriages either in Scotland or elsewhere.

Question 8 (Paragraphs 3.08 to 3.10)

Do you have any comments on opt-outs for civil registrars who do not wish to solemnise same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The Church believes that registrars should not be forced to solemnise same sex marriages or register civil partnerships under threat of job loss or disadvantage. Registrars should be entitled to the same protections as celebrants. This is particularly so for registrars who are already in post.

The Church is seriously concerned that other public servants may also face situations where there is a real conflict between their religious beliefs and the expectations of their employment, such that they may face job loss or disadvantage if they do not support same sex marriage or civil partnerships. The Church accordingly urges the Government to provide appropriate protections in the legislation to ensure that the rights enshrined in Article 9 of the European Convention on Human Rights will be upheld.

Question 9 (Paragraph 3.11 and Annex B)

Do you have any comments on the proposed approach in relation to freedom of speech?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The Church broadly welcomes the Government's proposals but awaits sight of the promised guidance before it can make any further comment.

Question 10 (Paragraphs 3.12 and 3.13 and Annex C)

Do you have any comments on the proposals in relation to education and same sex marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The Church believes that teachers should not be forced to support same sex marriage or civil partnerships in the course of teaching under threat of job loss or disadvantage. Teachers should be entitled to equivalent protections to celebrants. This is particularly so for teachers who are already in post.

Otherwise the Church awaits the publication of updated guidance before commenting further.

Question 11 (Paragraphs 3.21 to 3.29)

Do you have any comments on the proposals on the impact of same sex marriage on legislation, the common law or on private arrangements?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 12 (Paragraphs 3.21 to 3.29)

Are you aware of legislation where there is a need to make it clear that references to marriage or spouse should not extend to both opposite sex and same sex marriages or spouses?

If you are, please give details of the legislation and explain why it should not extend in this way. If not, please leave the box blank and go to the next question.

Your comments

Question 13 (Paragraph 3.31 to 3.33)

Do you have any comments on the proposed approach to the law on adultery?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 14 (Paragraphs 3.35 and 3.36)

Do you have any comments on the proposed approach to the law on permanent and incurable impotency?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Question 15 (Paragraphs 3.41 to 3.47)

Do you have any comments on the proposed approach to the law on bigamy?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Civil partnership

Question 16 (Paragraph 4.01 to 4.04)

Do you have any comments on the proposed approach to ensuring that religious and belief bodies and celebrants do not have to register civil partnerships?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

The Church adheres to the views expressed in its Response dated 1 December 2011 to the Scottish Government's Consultation on the Registration of Civil Partnerships/Same Sex Marriage. Nevertheless, the Church recognises that the Scottish Government intends to introduce religious civil partnerships. In these circumstances, the Church broadly welcomes the scheme which the Government proposes. However, much of that scheme will be contained in regulations and guidance which have not yet been published. The Church is also aware that even if enacted and issued, such legislation and guidance is subject to repeal and revocation and to potential challenge in the European Court of Human Rights.

The Church urges the Government to reconsider its proposals in the following respects:

1. In so far as it relates to religious registration of civil partnerships, the scheme is essentially permissive. The Church understands that the Government does not wish to compel religious bodies or celebrants to register civil partnerships or to imply that they have a duty to do so. Nevertheless, the Church believes that those intentions could be expressed in simpler and less ambiguous terms. The Church is particularly concerned about the proposed modifications to the Equality Act 2010 which are inconsistent with the Scottish Government's scheme.

Firstly, in contrast with the Scottish Government's intentions and in particular section 94A(3)(d), the proposed modifications to the Equality Act 2010 restrict the circumstances in which a minister or deacon may lawfully refuse to register a civil partnership. They only permit refusal to register a civil partnership if to do so 'would conflict with the approved celebrant's religious or philosophical beliefs'. This is too narrow and excludes, for example, the possibility that a minister may refuse to register a civil partnership in order to preserve the peace of his or her congregation.

Secondly, it is not made clear in the draft Bill that a religious body may nominate one of its members so that he or she is registered as empowered to register civil partnerships only with the agreement of that member. Neither is it specified that there is no duty on any member of a religious body to allow

himself or herself to be so nominated nor that a religious body may not require any of its members to be so nominated and, if registered, to remain so registered.

Accordingly the Church proposes that Scottish and UK legislation should be consistent in providing, without qualification, that an approved celebrant may refuse to register a civil partnership. This would match the equivalent provision in the Norwegian law of marriage and the terms of existing paragraph 25(1) and proposed paragraph 25(3) of the Equality Act 2010, Schedule 3. Proposed paragraph 25A(2) should be removed or, if it is to be retained, the limited scope of permitted reasons for refusal should be extended beyond the religious beliefs of the approved celebrant.

Furthermore, section 94A of the Civil Partnership (Scotland) Act 2004 (as proposed) should be amended to provide that no religious body may nominate one of its members so that he or she is registered as empowered to register civil partnerships without the agreement of that member. Section 94A should also be amended to make clear that there is no duty on any member of a religious body to allow himself or herself to be so nominated. Section 94A should be further amended to provide that a religious body may not require any of its members to be or to remain so registered.

2. The Government's scheme offers no protection to others who might otherwise be involved in the religious registration of a civil partnership such as an organist or church-officer. Accordingly, the scheme should include all who might reasonably be expected to participate in or facilitate the religious registration of a civil partnership.

3. The Church has places of worship and ecclesiastical buildings throughout Scotland which are used or are available for the solemnisation of opposite sex marriages by its ministers and deacons. Generally, these buildings are under the control of parish ministers and kirk sessions and other congregational committees with Presbyteries having a duty of oversight. The Church is concerned that the potential for use of these buildings for the registration of civil partnerships may be a cause of conflict and may deprive its ministers and courts of their right to decide how they are to be used.

The Church believes that paragraph 2 of the Equality Act 2010, Schedule 23 provides limited and inadequate protection to ministers and others who may have control over church buildings. For example, when faced with a request by another celebrant, who might have been permitted to use the buildings to solemnise an opposite sex marriage, to use the buildings to register a civil partnership, it appears that a minister's own religious beliefs or his or her desire to preserve the peace of his or her congregation are irrelevant considerations. In so far as a Church court or committee might be involved, it is not clear that paragraph 2 offers them adequate protection either.

Accordingly the Church proposes that Scottish and UK legislation should be consistent in providing, without qualification, that any person having control over or responsibility for the use of church buildings may refuse to permit them

to be used for the registration of a civil partnership.

4. The Government has not made clear how its proposals relate to armed forces' chaplains. The Church does not wish any of its ministers or deacons who are forces' chaplains to be obliged to register civil partnerships either in Scotland or elsewhere.

Question 17 (Paragraph 4.05 to 4.11)

Do you have any comments on the proposals for changing civil partnerships to a marriage?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

Transgender people

Question 18 (Paragraphs 5.01 to 5.06 and Annex D).

Do you have any comments on the detailed proposals for allowing transgender people in a relationship to stay together, if they and their partner so wish, when obtaining the full Gender Recognition Certificate?

If you do, please provide them in the box below. If not, please leave the box blank and go to the next question.

Your comments

**Scottish Government
December 2012**

Church of Scotland Response dated 19 March 2013